

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

<u>IN THE MATTER OF THE REYNOLDS</u>)	
METALS COMPANY STUDY AREA)	SETTLEMENT AGREEMENT
)	FOR RECOVERY OF
)	PAST RESPONSE COSTS
)	
Reynolds Metals Company,)	U.S. EPA Region 2 Docket No.
)	CERCLA-02-2011-2017
Settling Party.)	
)	
PROCEEDING UNDER SECTION 122(h)(1))	
OF CERCLA, 42 U.S.C. § 9622(h)(1).)	
)	

I. JURISDICTION

1. This Settlement Agreement for Recovery of Past Response Costs ("Settlement Agreement") is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D and was further delegated in Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.

2. This Settlement Agreement is made and entered into by EPA and the Reynolds Metals Company ("Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Reynolds Metals Company Study Area Superfund Site in Massena, St. Lawrence County, New York (the "Site"). The Site consists of the river systems located adjacent to an active aluminum production plant located on approximately 1,600 acres off Route 37 near the Massena-Cornwall International Bridge (the "Facility"). The Site includes those portions of the St. Lawrence, Grasse, and Raquette Rivers, their tributaries, and any wetlands, which are located adjacent to and have been impacted by the Facility. The Site is depicted generally on the map attached hereto as Appendix A. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA has undertaken response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. Such actions have included, but are not limited to: issuance of a Record of Decision for remedial action, overseeing remedial activities and sediment sampling at the Site being conducted by Settling Party pursuant to an Administrative Order under CERCLA, conducting a five-year review at the Site, reviewing various technical reports and submissions, issuing an Explanation of Significant Differences, and conducting community relations activities.

5. In performing response actions, EPA has incurred response costs at or in connection with the Site and continues to incur response costs.

6. Pursuant to a prior Consent Decree, Civil Action No. 03-CV-0952, with EPA, Settling Party reimbursed EPA for response costs incurred at the Site through January 26, 2002.

7. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. The signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind Settling Party.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and Settling Party.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Site from January 27, 2002 through September 30, 2010.

i. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

j. "Settling Party" shall mean the Reynolds Metals Company and its parent company, Alcoa Inc., to the extent that Alcoa's liability at the Site arises out of the same activities relating to the Site that gave rise to the alleged liability of Reynolds Metals Company.

k. "Site" shall mean the Reynolds Metals Company Study Area Superfund Site which consists of the river systems located adjacent to the Reynolds Facility, an active aluminum production plant located on approximately 1,600 acres off Route 37 near the Massena-Cornwall International Bridge in the Town of Massena, St. Lawrence County, New York.

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

11. Within 30 days of the effective date of this Settlement Agreement, Settling Party shall pay to the EPA Hazardous Substance Superfund the amount of \$1,527,664.69, plus Interest on such amount from the date of the demand through the date of payment, in reimbursement of Past Response Costs.

12. The payment to be made pursuant to Paragraph 11 above shall be remitted to EPA by check made payable to the United States Environmental Protection Agency, or to EPA's account at Federal Reserve Bank of New York via Electronic Funds Transfer ("EFT"). To make payment by EFT, Settling Party shall provide the following information to its bank:

- i. Amount of payment
- ii. Bank: **Federal Reserve Bank of New York**
- iii. Account code for Federal Reserve Bank of New York account receiving the payment:
68010727
- iv. Federal Reserve Bank of New York ABA Routing Number: **021030004**
- v. SWIFT Address: **FRNYUS33**
33 Liberty Street, New York, NY 10045
- vi. Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- vii. Name of Settling Party: **Reynolds Metals Company**
- viii. Case number: **CERCLA-02-2011-2017**
- vix. Site/Spill identifier: **024D**

Along with this information, Settling Party shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Federal Reserve Bank of New York. To make payment by check, Settling Party shall follow the payment instructions provided by EPA.

13. At the time of payment, Settling Party shall send notice that such payment has been made to the EPA contacts listed in Paragraph 29 and also to:

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: Richard Rice, FINANCE
MS: NWD
Cincinnati, Ohio 45268
E-mail: AcctsReceivable.CINWD@epa.gov

Said notice shall include the date of the EFT, or if by check, the notice shall include the number for the check, and the following information: the payment amount, the name of this Site, the Index

Number of this Settlement Agreement, and the name and address of Settling Party.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

14. If Settling Party violates any requirement of this Settlement Agreement, Settling Party shall pay to EPA, as a stipulated penalty, \$2,500 per violation per day.

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA required under Paragraph 14 shall be identified as "stipulated penalties" and shall be made in accordance with the procedures set forth in Paragraph 12.

16. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but such payment need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

17. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

VII. COVENANT NOT TO SUE BY EPA

19. Covenant Not to Sue by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the

satisfactory performance by Settling Party of its obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

21. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

22. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28

U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

24. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

25. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

26. The Parties agree that Settling Party is entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs.

27. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

28. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-

splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

XI. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA: Emergency and Remedial Response Division
 U.S. Environmental Protection Agency, Region 2
 290 Broadway, 20th Floor
 New York, NY 10007-1866
 Attn: Pam Tames, Remedial Project Manager

and to: Office of Regional Counsel
 U.S. EPA, Region 2
 290 Broadway, 17th Floor
 New York, NY 10007-1866
 Attn: Marla Wieder, Reynolds Metals Co. Site Attorney

As to Settling Party: Alcoa, Inc.
 Alcoa Corporate Center
 201 Isabella Street, 6th Floor
 Pittsburgh, PA 15212-5858
 Attn: Gregory J. Pfeifer, Esq.

XII. INTEGRATION

30. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

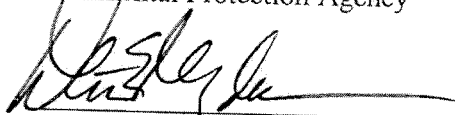
XIII. EFFECTIVE DATE

31. The effective date of this Settlement Agreement shall be the date upon which it is signed by the Director of the Emergency and Remedial Response Division of EPA Region 2 or his delegatee.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



WALTER E. MUGDAN

Director

Emergency and Remedial Response Division

U.S. Environmental Protection Agency

Region 2

8/16/2011

Date

THE UNDERSIGNED SETTLING PARTY enters into this Consent Order in the matter of Index Number CERCLA-02-2011-___ relating to the Reynolds Metals Company Study Area Superfund Site located in Massena, St. Lawrence County, New York:

NAME AND ADDRESS OF SETTLING PARTY: Alcoa, Inc.
Alcoa Corporate Center
201 Isabella Street, 6th Floor
Pittsburgh, PA 15212-5858

NAME AND TITLE OF SIGNATORY:
(please print or type)

KEVIN L. MCKNIGHT
DIRECTOR, EHS & SUSTAINABILITY


SIGNATURE

JULY 26, 2011
DATE